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In the Supreme Court of the United States

October Term, 1950

MAX [illegible], PETITIONER

v.

WILLIAM P. ROGERS, as Attorney General, etc., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 131

MAX REISSNER, PETITIONER

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WILLIAM P. ROGERS, as Attorney General, etc., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court of the United States for the District of Columbia (J.A. 12)[1] is unreported. The opinion of the Court of Appeals for the District of Columbia Circuit (Pet. 17-29) is reported at 276 F. 2d 506.

JURISDICTION

The judgment of the court of appeals was entered on March 10, 1960 (Pet. 30-31). The petition for

[1] The Joint Appendix in the court of appeals is designated herein as "J.A."

a writ of certiorari was filed on June 7, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Attorney General properly found that, under German law, the petitioner's claim was a debt, resulting in its revaluation under that law at the rate of one to ten.

2. Whether the rate of exchange at the date of judgment or at the date a claim is filed controls in converting into dollars an obligation originally payable in a foreign country in foreign currency.

STATUTE INVOLVED

The pertinent provisions of Section 34 of the Trading with the Enemy Act, as amended (60 Stat. 925. 50 U.S.C. App. 34) are printed in the petition at pages 15-16.

STATEMENT

The petitioner was the beneficial owner of all the stock of Anticoman GmbH, a German limited liability company, which developed a patent medicine, called "Anticoman", a purported oral remedy for diabetes (J.A. 18-19). Because of Nazi discriminatory laws, Anticoman entered into a contract of sale with Schering, A.G., a pharmaceutical house in Germany, under which Schering paid Anticoman the insufficient price of 153,300 Reichsmarks for its principal assets (J.A. 22-23).

On February 24, 1948, the petitioner filed a debt claim with the Office of Alien Property under Section

34 of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34), against the vested assets of Schering, A.G. to obtain the payment of $613,800 plus interest on the ground that Schering was indebted to him in that amount. After finding that the petitioner was entitled to recover on the ground that the sale was void and the buyer therefore under a quasi-contractual obligation to pay for its unjust enrichment, the Attorney General reduced the claim in two respects: he held (1) that since the claim was a debt under German law, it was subject to a revaluation of the German currency of one Deutsche Mark for each ten Reichsmarks; and (2) that the claim in German currency was to be converted into dollars at the rate of exchange payable on the day of judgment, December 23, 1957, rather than as of the day the claim was filed.

The District Court for the District of Columbia affirmed the order as to the original amount of the claim, but held that the German Currency Conversion Law was inapplicable to the case so that the exchange was one mark for one, rather than one for ten, and that the date of exchange for dollars should be the date that the claim was filed. The court of appeals reversed the district court in both of these respects.

ARGUMENT

1. The effect of the devaluation of German currency on the German claim was clearly a matter of German law and, as such, was determined as a question of fact. *Black Diamond* v. *Stewart & Sons*, 336

U.S. 386, 396-397; *Cuba R.R. Co.* v. *Crosby*, 222 U.S. 473, 479. The evidence of experts was received, and the Attorney General found as a matter of fact that under German law the claim was a debt claim subject to devaluation at the ten to one rate (J.A. 71-72). The court below held that this finding was not "clearly erroneous" (Pet. 28).[2] The petitioner now complains that since the Attorney General's decision was an administrative finding, rather than a judicial finding by a trial court, the "clearly erroneous" rule taken from Rule 52(a) of the Federal Rules of Civil Procedure was improper (Pet. 6). However, whatever distinctions can be drawn between this standard and the standard ordinarily applicable to administrative agencies, that the findings must be supported by "substantial evidence," the decision here was clearly supported under either rule. Therefore on the question of the quantum of proof necessary to support a finding by the Attorney General under the Trading with the Enemy Act, there is no question of substance for review by this Court in this case.

2. The court of appeals correctly ruled that pursuant to the "judgment day" rule of *Deutsche Bank* v. *Humphrey*, 272 U.S. 517, petitioner's German currency claim must be converted into dollars at the rate

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[2] A determination by the Attorney General on a debt claim against vested property is made reviewable in the District Court for the District of Columbia. 50 U.S.C. App. 31(c). Such a claim differs in character from a claim for return under 50 U.S.C. App. 32(a), a decision under which this Court recently held is not judicially reviewable. *Schilling* v. *Rogers*, No. 319, Oct. Term, 1959, decided June 20, 1960.

of exchange in effect on the date that the claim was allowed by the Custodian.

The controlling authorities, so far as the federal courts are concerned, as to the date for converting foreign currency, are *Hicks* v. *Guinness*, 269 U.S. 71, and *Deutsche Bank* v. *Humphrey*, 272 U.S. 517. In the former case, it was held that where suit is brought for breach of contract to deliver foreign currency in this country, the claimant's damages are translated into dollars at the rate of exchange on the day the right arises. This is the so-called "breach day" rule. In the *Deutsche Bank* case, on the other hand, it was held that where suit is brought for breach of contract to pay foreign currency in the foreign country, the claimant's damages are measured in the foreign currency at the date of breach and converted into dollars at the rate of exchange on the date judgment is entered. Or, in other words, where the cause of action or right is given by or arises under foreign law, the rate of exchange on the date the right is merged into a judgment is employed. This is the so-called "judgment day" rule. Federal courts have never deviated from the "judgment day" rule of the *Deutsche Bank* case in converting foreign currency claims created by foreign law and payable in a foreign country into dollars. *Straehler* v. *Brownell*, 246 F. 2d 675 (C.A.D.C.); *Paris* v. *Central Chicle ra, S.DeR.L.*, 193 F. 2d 960 (C.A. 5); *Shaw, Savill, Albion & Co., Ltd.* v. *The Fredericksburg*, 189 F. 2d 952 (C.A. 2); *Indian Refining Co.* v. *Vaiveline Oil Co.*, 75 F. 2d 797 (C.A. 7); *Tillman* v. *Russo-Asiatic Bank*, 51 F. 2d 1023 (C.A. 2), certiorari denied, 285

U.S. 539; see also *International Silk Guild* v. *Rogers*, 262 F. 2d 219, 224 (C.A.D.C.).

There is no dispute in this case that petitioner's claim against Schering was given him by virtue of and arose under German law and was payable in Germany. Thus, the "judgment day" rule is clearly applicable.

CONCLUSION

The decision below is correct. There is no conflict of decisions, and no question of general importance is presented. It is respectfully submitted that the petition for certiorari should be denied.

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